



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

PRESBYTERIAN HOSPITAL OF DALLAS
12000 FORD ROAD SUITE 400
DALLAS TEXAS 75234

Respondent Name

FACILITY INSURANCE CORP

Carrier's Austin Representative Box

Box Number 19

MFDR Tracking Number

M4-98-5583-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The health care provider's position is that fair and reasonable reimbursement should be paid on inpatient claims with dates of service on or after December 6, 1995. The per diem rates paid are not fair and reasonable because they have been invalidated by the Texas Supreme Court and should not be used as a standard for determining fair and reasonable. The proper standard for determining fair and reasonable is the old law standard of fair and reasonable--not the invalidated per diem rates that were adopted when the new law was passed... We believe that this award and other similar awards clearly establish that TWCC defines 'fair and reasonable' as 100% of the total charges, less non-covered items."

Amount in Dispute: \$4,598.42

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "This is in regards to a dispute being made by Presbyterian Hospital of Dallas. Our records indicate we paid \$1100.00 on 2/7/97 with check #149547."

Response Submitted by: Willis - Rollinson Inc., P.O. Box 660687, Dallas, Texas 75266

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
December 9, 1996	Outpatient Hospital Services	\$4,598.42	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. Former 28 Texas Administrative Code §133.305, effective June 3, 1991, 16 *Texas Register* 2830, sets out the procedures for resolving medical fee disputes.

2. Former 28 Texas Administrative Code §134.1(f) effective October 7, 1991, 16 *Texas Register* 5210, sets out the reimbursement guidelines for the services in dispute.
3. This request for medical fee dispute resolution was received by the Division on July 14, 1997.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - M–Reduced to fair and reasonable – Appeal has been considered. The original audit recommendation will abide. The above services have been audited in accordance with the TWCC ground rule for fair and reasonable for inpatient hospital stays
 - F–Reduction according to fee guidelines – Per preauthorization approval the inpatient hospital stay was reimbursed according to the hospital fee guidelines per diem (refer to GR-II, PG. 3)

Findings

1. This dispute relates to outpatient medical services. The services in dispute were not identified in an established fee guideline during the disputed dates of service; therefore, reimbursement is subject to the provisions of 28 Texas Administrative Code §134.1(f) effective October 7, 1991, 16 *Texas Register* 5210, which requires that “Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers’ Compensation Act, sec. 8.21(b) until such period that specific fee guidelines are established by the commission.”
2. The former Texas Workers’ Compensation Act section 8.21 was repealed, effective September 1, 1993 by Acts 1993, 73rd Legislature, chapter 269, section 5(2). Therefore, for services rendered on or after September 1, 1993, the applicable statute is the former version of Texas Labor Code section 413.011(b), Acts 1993, 73rd Legislature, chapter 269, section 1, effective September 1, 1993, which states, in pertinent part, that “Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The commission shall consider the increased security of payment afforded by this subtitle.”
3. 28 Texas Administrative Code §133.305(d)(7), effective June 3, 1991, 16 *Texas Register* 2830, requires that the request shall include “copies of all written communications and memoranda relating to the dispute.” Review of the documentation submitted by the requestor finds that the request does not include a copy of medical documentation and EOBs or other written communications and memoranda pertinent to the dispute. The Division concludes that the requestor has not met the requirements of §133.305(d)(7).
4. Review of the submitted documentation finds that:
 - The requestor’s position statement asserts that “The health care provider’s position is that fair and reasonable reimbursement should be paid on inpatient claims with dates of service on or after December 6, 1995. The per diem rates paid are not fair and reasonable because they have been invalidated by the Texas Supreme Court and should not be used as a standard for determining fair and reasonable. The proper standard for determining fair and reasonable is the old law standard of fair and reasonable--not the invalidated per diem rates that were adopted when the new law was passed... We believe that this award and other similar awards clearly establish that TWCC defines ‘fair and reasonable’ as 100% of the total charges, less non-covered items.”
 - The Division notes that former Division rule at 28 Texas Administrative Code §42.110(b)(2) is not applicable to the services in dispute. As noted above, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court’s opinion in *All Saints Health System v. Texas Workers’ Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied).
 - The Division finds that a reimbursement methodology based upon payment of a hospital’s billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. Such a reimbursement methodology would leave the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs. Therefore, a reimbursement amount that is calculated based upon a percentage of a hospital’s billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
 - The requestor does not discuss or explain how payment of the amount sought would result in a fair and reasonable reimbursement for the services in this dispute.
 - The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement for the disputed services.

- The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____	_____	October 21, 2011
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.